cause of uncertainty, (*Dudley* v. *Gates,* 124 Mich. 440, 83 N. W. 97), or because not made a sufficient length of time before the death of the testator, (*Price* v. *Maxwell,* 28 Pa. 23), or if an appointment is made in excess of the power of the donee, (*Colvin* v. *Warford,* 20 Md. 357), the general rule is that a clause expressly revoking a prior will or provision is not affected by the failure of the disposition attempted to be made. *Tupper* v. *Tupper,* 1 Kay & J. 665; *Melville's Estate,* 245 Pa. 318, 91 Atl. 679, L. R. A. 1916 C. 98, and note. Where the revocation is not expressed, but merely implied from a provision in the later instrument which is inconsistent with the prior disposition, the revocation is only to such an extent as is necessary to give effect to the later provision, hence there is no revocation at all if the later provision is void. *Austin* v. *Oakes,* 117 N. Y. 577, 23 N. E. 193; *Eli* v. *Megie,* (N. Y. 1916), 113 N. E. 800, *semble*; *Duguid* v. *Fraser,* 31 Ch. D. 449, 55 L. J. Ch. 285. In the principal case, where the revocation was by express words, the court has advanced beyond the holding in *Duguid* v. *Fraser,* where the revocation was only by implication, and says: "It does not seem that the real point depends upon the question of whether there are words of direct revocation, or whether such words are absent." See also *Security Co.* v. *Snow,* 70 Conn. 288, 39 Atl. 153, which is in accord with the principal case, but stands alone in this country. The question in these cases must not be confused with the question in *Onions* v. *Tyrer,* 1 P. Wms. 343; *Rudy* v. *Ulrich,* 69 Pa. St. 177, and *Moore* v. *Rowlett,* 269 Ill. 88, 109 N. E. 682, L. R. A. 1916 C. 89, and note, where the subsequent provision fails because of a defect in the execution of the later instrument, or in the capacity of the person, when it is void in toto, hence a clause expressly revoking the prior instrument falls with the devise.

WILLS—POWER OF SALE GIVES NO POWER TO MORTGAGE.—It was provided in a will that the devisee of a life estate, the wife of the testator, had "the right to dispose of any property as she may think best for the purpose of paying all just debts or supporting or maintaining herself and children;" and under this power the widow executed a mortgage of the fee to the defendant. The children of the testator, who by the will were entitled to "the entire property remaining" at the death or marriage of the life-tenant, urge that the mortgage is not binding on their interest in the remainder. *Held,* that the mortgage in fee was void, since the power to sell did not include the power to mortgage, nor could she by sale or mortgage bind any interest in the estate except her own. *Sheffield* v. *Grieg,* (S. C. 1916) 89 S. E. 664.

That a mere power to one to sell does not include a power to mortgage, is the general rule, as followed in the instant case, especially if the one having the power is a mere agent or attorney. *Jeffrey* v. *Hursh,* 49 Mich. 31, 12 N. W. 898. The executor with "entire management and control," does not have power to make a mortgage, (*Price* v. *Courtney,* 89 Mo. 387, 56 Am. St. 453), nor can a trustee with power to sell and invest the proceeds, make a mortgage (*Hannah* v. *Carnahan,* 65 Mich. 601, 32 N. W. 835). The power of the devisee of a life estate to sell a fee was restricted so as not to include a power to mortgage by the application of the broad general rule, in *Hoyt*

v. *Jaques,* 129 Mass. 286, the court holding that "a power to sell imports a sale 'out and out' and will not authorize a mortgage, unless something in the will shows that a mortgage was within the intention of the testator." See also *Bloomer* v. *Waldron,* 3 Hill 361. Opposed to the general rule is *Zane* v. *Kennedy,* 73 Pa. 182, where the court holds that an "absolute and unrestricted power to sell includes a power to mortgage," on the theory that a mortgage is a conditional sale. The rule is not without its exception, for in *Ball* v. *Harris,* 4 Myl. & Cra. 264, it was said that it had been settled since the decision of *Mills* v. *Banks,* 3 P. Wms. 9 in 1724 that where an estate is devised with a charge imposed, or a power to raise a sum of money, power to sell includes a power to mortgage. In *Loebenthal* v. *Raleigh,* 36 N. J. Eq. 169, a mortgage was allowed to be made where the power to sell was for the purpose of raising a sum sufficient to pay debts, and it appeared to the court that the "purpose could be answered better by mortgage than by sale." Where one is the devisee of a life estate and has the power to sell for "support and maintenance," many courts are inclined to modify the general rule and under the power of sale to permit a mortgage. In *Hamilton* v. *Hamilton,* 149 Ia. 321, 128 N. W. 380, the court says that a power to sell given to an agent, trustee, or attorney, which power is strictly construed, and generally held not to include a power to mortgage, is to be distinguished from a testamentary power, given not for the benefit and profit of the donor, but in furtherance of some benefit intended to be conferred on the donee; and unless the intention clearly appears otherwise, the authority to mortgage for the purpose expressed in the writing will be inferred. This modification has also been allowed by the courts in the cases of *Kent* v. *Morrison,* 153 Mass. 137, 26 N. E. 427, 10 L. R. A. 756; *McCreary* v. *Bomberger,* 151 Pa. 323, 24 Atl. 1066; *Swarthouth* v. *Ranier,* 143 N. Y. 499, 38 N. E. 726. See also 20 HARV. L. REV. 568, and 15 MICH. L. REV. 331.

WILLS—SOLDIERS AND SEAMEN.—The privilege provided by §11 of the Wills Act of 1837, that any soldier *being in actual military service* or mariner or seaman *being at sea* may dispose of his personal estate as he might have done before the passing of the act, was claimed for each of two unattested papers offered for probate. In the first case the deceased had volunteered and had been ordered to report for duty in the Naval Sick Berth Service. The writing was executed after receiving orders to embark but before he had actually joined the ship. *Held,* that the papers were inadmissable for probate, for, although the deceased was a seaman, he had not yet been at sea. *Estate of Anderson,* [1916] Pro. 49, 85 L. J. Pro. 21.

In the second case, a female nurse had been employed on a hospital ship under engagement with the War Office. When the writing was executed she was on shore leave but had received orders to embark. *Held,* that the paper was entitled to probate as the will of a soldier "being in actual military service." *Estate of Stanley,* [1916] Pro. 192, 85 L. J. Pro. 222.

The privilege of having an informal writing probated as a will of personalty has been interpreted so as to be available not only to "mariners and seamen," both common seamen and officers, (*Goods of Hays,* 2 Curt. Eccl.